STATE OF NEW YORK

4993

2023-2024 Regular Sessions

IN ASSEMBLY

February 27, 2023

Introduced by M. of A. L. ROSENTHAL -- read once and referred to the Committee on Judiciary

AN ACT to amend the real property actions and proceedings law, in relation to adjournments relating to right to counsel

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 1 of section 745 of the real property actions and proceedings law, as amended by section 17 of part M of chapter 36 of the laws of 2019, is amended to read as follows:

1. **(a)** Where triable issues of fact are raised, they shall be tried by the court unless, at the time the petition is noticed to be heard, a party demands a trial by jury, in which case trial shall be by jury. At the time when issue is joined the court, at the request of either party shall adjourn the trial of the issue, not less than fourteen days, except by consent of all parties. A party's second or subsequent request for adjournment**, except as provided by paragraph (b) of this subdivision,** shall be granted in the court's sole discretion.

(b) In any jurisdiction in which a party may be eligible under local law for free legal counsel, the court shall notify such party orally of their ability to obtain free legal counsel pursuant to local law, and, if such party elects to obtain, the court shall adjourn the trial for not less than thirty days for such party to retain and consult counsel and shall grant such further adjournments for not less than thirty days each as are necessary for such party to retain and consult counsel.

§ 2. Paragraph (a) of subdivision 2 of section 745 of the real property actions and proceedings law, as amended by section 17 of part M of chapter 36 of the laws of 2019, is amended to read as follows:

(a) In a summary proceeding upon the second of two adjournments granted solely at the request of the respondent, or, upon the sixtieth day after the first appearance of the parties in court less any days that the proceeding has been adjourned upon the request of the petitioner,

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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counting only days attributable to adjournment requests made solely at the request of the respondent and not counting an initial adjournment requested by a respondent unrepresented by counsel for the purpose of securing counsel, whichever occurs sooner, the court may, upon consideration of the equities, direct that the respondent, upon a motion on notice made by the petitioner, deposit with the court sums of rent or use and occupancy that shall accrue subsequent to the date of the court's order, which may be established without the use of expert testimony. The court shall not order deposit or payment of use and occupancy where the respondent can establish, to the satisfaction of the court that respondent has properly interposed one of the following defenses or established the following grounds:

(i) the petitioner is not a proper party to the proceeding pursuant to section seven hundred twenty-one of this article; or

(ii) (A) actual eviction, or (B) actual partial eviction, or (C) constructive eviction; and respondent has quit the premises; or

(iii) a defense pursuant to section one hundred forty-three-b of the social services law; or

(iv) a defense based upon the existence of hazardous or immediately hazardous violations of the housing maintenance code in the subject apartment or common areas; or

(v) a colorable defense of rent overcharge; or

(vi) a defense that the unit is in violation of the building's certificate of occupancy or is otherwise illegal under the multiple dwelling law or the New York city housing maintenance code; or

(vii) the court lacks personal jurisdiction over the respondent.

Two adjournments shall not include an adjournment requested by a respondent unrepresented by counsel for the purpose of securing counsel made on a return date of the proceeding**, including an adjournment pursuant to paragraph (b) of subdivision one of this section**. Such rent or use and occupancy sums shall be deposited with the clerk of the court or paid to such other person or entity, including the petitioner or an agent designated by the division of housing and community renewal, as the court shall direct or shall be expended for such emergency repairs as the court shall approve.

§ 3. This act shall take effect immediately and shall apply to actions and proceedings pending on and after such date.